IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

S.T.Rev.No.366 of 2005

ORDER DATED 12.2.2004 IN T.A.237/1994 OF KERALA AGRICULTURAL INCOME TAX & SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOTTAYAM
(ASSESSMENT YEAR 1991-92)

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PETITIONER/APPELLANT/APPELLANT/ASSESSEE:-

TRAVANCORE RUBBERS LIMITED,
KOTTAYAM.

BY ADV. SRI.JOHN RAMESH K.I.JOHN

RESPONDENT/RESPONDENT/REVENUE:-

STATE OF KERALA,
REPRESENTED BY COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.Dattu,C.J. & P.N.Ravindran,J.

S.T.Rev.No.366 of 2005

Dated, this the 14th day of December, 2007

ORDER

H.L.Dattu,C.J.

The petitioner is a Company, registered under the provisions of the Companies Act. It is engaged in the business of plantation. It is also registered under the provisions of the Kerala General Sales Tax Act, 1963 ("KGST Act" for short) and Central Sales Tax Act, 1956 ("CST Act" for short).

(2) In this Sales Tax Revision, we are concerned with the assessment year 1991-92.

(3) The assessee is having Rubber Estate at Erumeli. The assessing authority while completing the assessment for the assessment year 1991-92, had levied sales tax on the sales of standing rubber trees effected by the assessee. Aggrieved by the said order of the assessing authority, the assessee had carried the matter before the Appellate Assistant Commissioner, Agricultural Income Tax & Sales Tax, Kottayam. The said authority had rejected the appeal. Aggrieved by the said order, the assessee was before the Agricultural Income Tax and Sales Tax Appellate Tribunal in T.A.No.237 of 1994. The Tribunal, relying upon the observations made by a Division Bench of this Court in the case of *Tropical Plantations Limited* v. *State of Kerala* [(2001) 9 KTR 68], had rejected the assessee's appeal. Aggrieved by the said order passed by the Tribunal, the assessee is before us in this Sales Tax Revision.

(4) The assessee has framed the following questions of law for our consideration and decision. They are as under:

> (i) Whether on the facts and circumstances of the case the Tribunal was justified in upholding the order of the authorities

below levying tax on the sales turnover of standing rubber trees which were sold pursuant to agreement dated 27.3.91 and 17.4.91 relying on the judgment in 9 KTR 68 (Ker) which judgment is in jeopardy.

(ii) Whether on the facts and circumstances of the case the Tribunal was justified in holding that standing rubber trees are timber coming within Explanation I to Section 2(xxvii) of the KGST Act and hence exigible to tax while the 1st Appellate Authority found that it is used for furniture only after chemical treatment and this Honourable Court held in 12 KTR 201 that Rubber Wood is only used as fire wood and it becomes timber only after chemical treatment.

(iii) Whether on the facts and circumstances of the case the Tribunal was justified as not considering the additional ground raised before it regarding the very assessability of the sales turnover of Rs.6,59,500/- for the year 1991-92, when the two agreements dated 27.3.1991 decisively point out to the conclusion that it is a sale deed showing that the sale has taken place on 27.3.1991 which relates to the assessment year 1990-91.

(iv) Whether on the facts and circumstances of the case and in the light of the decisions of this Honourable Court reported in 187 ITR 112, the sale of rubber trees for Rs.6,59,500/- based on agreements dated 27.3.1991 can be taken as pertaining to and relevant for the assessment year 1991-92".

(5) Sri.John Ramesh, learned counsel appearing for the assessee would submit that the apex Court in the Special Leave Petitions filed by Tropical Plantations Ltd., in Civil Appeal Nos.396-410 of 2002, has set aside the orders passed by a Division Bench of this Court and, further, has remanded the matter to the Tribunal for re-consideration.

(6) In the instant case, the Tribunal, while rejecting the assessee's appeal, had primarily relied upon the dicta laid down by this Court in the case of Tropical Plantations Ltd. and that decision is not approved by the apex Court. In fact, the apex Court has remanded the matter to the Tribunal for re-consideration of the whole issue.

(7) In view of the decision of the apex Court, in our opinion, the orders passed by the Tribunal cannot be sustained by us.

(8) Accordingly, we make the following:

Order

(i) The orders passed by the Tribunal in T.A.No.237 of 1994 dated 12th February, 2004 for the assessment year 1991-92 is set aside.

(ii) The matter is remitted back to the Tribunal for a fresh consideration in accordance with law as directed by the apex Court in the case of Tropical Plantations Ltd. v. State of Kerala [Civil Appeal Nos.396-410 of 2002 dated 25th July, 2007].

Ordered accordingly.

H.L.Dattu
Chief Justice

P.N.Ravindran
Judge

vku/-